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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 252.

THE PEOPLE EX REL. THE NATIONAL BANK OF THE REPUBLIC OF THE CITY OF NEW YORK, PLAINTIFFS IN ERROR,

vs.

JOHN T. HOFFMAN, MAYOR, RICHARD B. CONNOLLY, COMPTROLLER OF THE CITY OF NEW YORK, ET AL.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

FILED JANUARY 27, 1868.

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a The answer of the judges of the Court of Appeals of the State of New York, in the within writ named, doth certify, under the seal of our said court, to the justices of the Supreme Court of the United States, at the Capitol in the city of Washington, and send the record whereof mention in said writ is made, with all things touching or in anywise concerning the same, as appears in a certain schedule to this writ annexed, as within it is commanded.

By the court:

[SEAL.] C. H. YOUNG,

Deputy Clerk of the Court of Appeals of the State of New York.

b UNITED STATES OF AMERICA, *ss*:

The President of the United States to the honorable the Court of Appeals of the State of New York, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said the Court of Appeals of the State of New York, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the people of the State of New York, on the relation of the National Bank of the Republic of the city of New York, and John T. Hoffman, mayor of the city of New York, Richard B. Connolly, comptroller of said city, and Joseph B. Young, clerk of the board of supervisors of the county of New York, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption, specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened to the great damage of the said relators, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the fourth Monday of January instant, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the first Monday of January, in the year of our Lord one thousand eight hundred and sixty-eight.

[SEAL.] D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

Allowed by—

S. NELSON.

Endorsed: U. S. Sup. Court. The people ex rel. Nat'l B'k Republic *v.* John T. Hoffman, Mayor, &c. Writ of error.

c By the Honorable Samuel Nelson, one of the judges of the Supreme Court of the United States of America.

To John T. Hoffman, mayor of the city of New York, Richard B. Connolly, comptroller of said ctty, and Joseph B. Young, clerk of the board of supervisors of the county of New York:

Whereas , lately issued out of the Supreme Court of the United States of America a writ of error, directed to the Court of Appeals of the State of New York, stating that in the record and proceedings, as also in the rendition of the judgment, of a plea in the said court between the people of the State of New York, on the relation of the National Bank of the Republic of the city of New York, against John T. Hoffman, mayor of the city of New York, Richard B. Connolly, comptroller of said city, and Joseph B. Young, clerk of the board of supervisors of the county of New York, a manifest error hath happened, to the great damage of the said relators;

And whereas, for the correction of that error in due manner, the said writ has been issued returnable at the Supreme Court of the United States, at the city of Washington, on the fourth Monday of January, instant:

You are therefore hereby cited and admonished to be and appear before said Supreme Court of the United States, at the city of Washington, on the said fourth Monday of January, instant, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of Washington, the eleventh day of January, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States the ninety-third.

S. NELSON.

Inspection of the within citation and due service of a copy thereof is hereby admitted.

Dated New York, January 20, 1868.

RICH'D O'GORMAN,
Counsel to the Corporation.

Endorsed: U. S. Supreme Court. The People ex rel. The National Bank of the Republic, &c., ag't John T. Hoffman, mayor, &c., and others. Citation. Tho's H. Rodman, proctor for pl'ffs in error.

I hereby appear for John T. Hoffman, mayor, &c., and o'rs, the within-named defendants in error, and consent that a writ of error be issued, returnable at an early day during the present term of the Supreme Court of the United States; and I hereby waive the usual 30 days' service of citation, and consent to accept short service of the same.

N. Y., Jan'y 11, 1868.

RICH'D O'GORMAN,
Counsel to Corporation and for Def'ts in Error.

d Supreme Court of the United States of America.

Bond for costs.

THE PEOPLE OF THE STATE OF NEW YORK on the relation of the National Bank of the Republic, of the city of New York, plaintiffs in error,
vs.
JOHN T. HOFFMAN, MAYOR OF THE CITY of New York, Richard B. Connolly, comptroller of said city, and Joseph B. Young, clerk of the board of supervisors of the county of New York, defendants in error.

Know all men by these presents, that we, Robert H. Lowry, of the city of New York, and Geo. B. Carhart, of the city of Brooklyn, are held and firmly bound unto the above-named defendents in error, in the sum of five hundred dollars to be paid to the said defendents in error, for the payment of which well and truly to be made we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the eleventh day of January, in the year of our Lord one thousand eight hundred and sixty-eight.

Whereas the above-named relator, the National Bank of the Republic, has prosecuted a writ of error in the Supreme Court of the United States to the Court of Appeals of the State of New York to reverse the judgment rendered in the above-entitled suit by the said Court of Appeals of the State of New York:

Now, therefore, the condition of this obligation is such, that if the above-named relator shall prosecute their writ of error to effect, and answer all damages and costs if said relator fail to make the same good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

[L. S.] R. H. LOWRY.
[L. S.] G. B. CARHARD.

Sealed and delivered, and taken and acknowledged this 11th day of January, 1868, before me.

JAMES S. CRAFT,
Notary Public.

UNITED STATES OF AMERICA, *Southern District of New York, ss:*

Robert H. Lowry and G. B. Carhart, each being sworn, deposes and says, each for himself, that he is a resident and householder in the State of New York; that he is worth the sum of one thousand dollars over and above all his just debts and liabilities.

R. H. LOWRY.
G. B. CARHART.

Sworn to this 11th day of January, A. D. 1868, before me.
[NOTARIAL SEAL.] JAMES S. CRAFT,
Notary Public.

Endorsed: Vol. Page . U. S. Supreme Court, The people ex rel. the National Bank of the Republic, *vs.* John T. Hoffman, mayor of the city of New York, and others, bond for costs on writ of error to Court of Appeals of State of New York. Tho's H. Rodman, relator's proctor, 54 William st., N. Y. Approved. Filed this 13th day of January, 1868. S. Nelson.

Due service of a copy of the within bond admitted this 20th day January, 1868.

RICH'D O'GORMAN,
Counsel to the Corporation.

Filed Jan'ry 21, 1868.

1 Supreme Court.

Notice of appeal.

THE PEOPLE OF THE STATE OF NEW YORK on the relation of the National Bank of the Republic, of the city of New York,
against
JOHN T. HOFFMAN, MAYOR OF THE CITY of New York, Richard B. Connolly, comptroller of said city, and Joseph B. Young, clerk of the board of supervisors of the county of New York.

SIRS: You will please take notice that the plaintiff appeals to the general term of this court from the judgment, and every part thereof, entered in this action in favor of the defendants and against the plaintiff, on the 13th day of March, 1867, in the office of the clerk of the county of New York.

Dated March 18th, 1867.

Yours, &c.,
THOMAS H. RODMAN,
Appellant's Attorney, 54 William st., N. Y.

To Richard O'Gorman, esq., respondent's attorney. Wm. C. Conner, esq., clerk of the county of New York.

2 Pleas in the Supreme Court of the State of New York, at the City Hall of the city of New York, at a special term thereof held on the 4th day of March, 1867:

CITY AND COUNTY OF NEW YORK, *ss:*

Be it remembered that at the special term of the said court, held at the city hall, in the city of New York, on the 4th day of March, 1867, before the Hon. D. P. Ingraham, one of the justices of the said court, the said people on the relation of the National Bank of the Republic, of the city of New York, issued their writ of alternative mandamus to John T. Hoffman, mayor, and Richard B. Connolly, comptroller of the city of New York, and Joseph B. Young, clerk of the board of supervisors of the county of New York, which writ is in the words and figures following:

At a special term of the Supreme Court of the State of New York, held at the city of New York, on the 26th day of February, 1867.

Present: Hon. William H. Leonard, justice.

THE PEOPLE OF THE STATE OF NEW YORK on the relation of the National Bank of the Republic, of the city of New York, *against* JOHN T. HOFFMAN, MAYOR OF THE CITY OF New , Richard B. Connolly, comptroller of said city, and Joseph B. Young, clerk of the board of supervisors of the county of New York.	Order to show cause.

3 On reading the affidavit of Robert H. Lowry, president of the National Bank of the Republic, of the city of New York, the relator herein, and on motion of Thomas H. Rodman, attorney for the relator in the above entitled matter:

It is ordered that an alternative mandamus issue out of and under the seal of this court, directed to the said John T. Hoffman, mayor, and Richard B. Connolly, comptroller of the city of New York, commanding them to sign and countersign--and to the said Joseph B. Young, clerk of the said board of supervisors, commanding him to seal with the seal of the said supervisors, (and attest the same.) and commanding the said comptroller to deliver forthwith to the relator herein, bonds of the county of New York to the amount of $60,411 06, with interest from May 1, 1866, known and designated as "New York county bonds for the repayment of taxes," and which have been prepared under and in pursuance of the act of the legislature of this State, passed April 30, 1866, entitled "An act to provide for the refunding to various banks and insurance companies in the city of New York the taxes of the years 1863 and 1864, imposed and paid or collected upon that portion of their capital invested in securities of the United States, by law exempt from taxation." And in accordance with an ordinance of the said board of supervisors, passed

January 7, 1867, and a resolution of said board, adopted January 29, 1867:

Or that the said John T. Hoffman, mayor, Richard B. Connolly, comptroller, and Joseph B. Young, clerk of the said board of supervisors, and each of them, show cause to the contrary before this court, at special term to be held at the chambers thereof, at the City Hall, in the city of New York, on the first Monday of March next, at 12 m., or as soon thereafter as counsel can be heard.

(S'd) Enter. W. H. L., *P. J.*

A copy. WM. C. CONNER, *Clerk.*

4 *Writ of mandamus.*

The people of the State of New York to John T. Hoffman, mayor of the city of New York, Richard B. Connolly, comptroller of said city, and Joseph B. Young, clerk of the board of supervisors of the county of New York, greeting:

[U. S. rev. stamp, 50 cents.]

Whereas it has been represented to us, in our Supreme Court of the State of New York, on the part and behalf of the National Bank of the Republic, of the city of New York, that the said bank was, in and during the years 1863 and 1864, a banking association, organized under the laws of the said State, and located and doing business in said city, and was, in the month of April, 1865, pursuant to an act of Congress to provide a national currency, approved June 3, 1864, and also to an act of the legislature of this State, passed March 9, 1865, entitled "An act enabling the banks of the State to become associations for the purpose of banking under the laws of the United States," converted into and became a national banking association, under the name of the National Bank of the Republic, of the city of New York; and thereby all the property, assets, and effects of the said Bank of the Republic, of the city of New York, then and there became vested in the said National Bank of the Republic, of the city of New York.

That on the 12th day of January, 1863, the commissioners of taxes and assessments of the city of New York did assess and value the real estate of the said Bank of the Republic, for the purpose of taxation in that year, at $170,000, and the personal estate of said bank at $1,823,000.

That upon notice thereof from the said commissioners, the said Bank of the Republic, according to the statute in such case
5 made and provided, on or about the 23d April, 1863, presented to the said commissioners a statement, with a schedule thereto annexed, showing the value of the real and personal property of said bank subject to taxation in that year, and which statement was duly verified by the proper officers of said bank, and was in all respects correct and true, and which statement and schedule showed

that the capital stock of said bank was $2,000,000; that said association had not surplus profits or reserved funds exceeding ten per cent. of the said capital; that the said capital, to the extent of $1,758,000, was invested in the bonds and other securities of the United States on the 12th of January, 1863, on which day the annual record of the assessed valuation of real and personal estate within the city and county of New York was completed by the said commissioners, pursuant to the statute, and the said assessment and valuation of the property of said bank entered therein.

That the real estate of said bank was actually of the value of $177,000; that its personal property, to the extent of $1,758,000, parcel of the said personal estate, so assessed and valued by the said commissioners at $1,823,000, was invested in said United States bonds and other securities, as follows :

5	per cent.	bonds of	1874	$100,000
5	"	"	" 1865	6,000
6	"	"	" 1881	42,000
6	"	"	certificates of indebtedness	188,000
5	"	"	assist't treasurer's certificates	1,422,000
				$1,758,000

Which were alleged by said bank to be exempt from taxation under State authority, and that the only personal estate of said bank subject to taxation under such authority, was of the value of $65,000; and the said bank objected to said valuation and assessment of
6 said commissioners, and applied to them to correct the same accordingly, which was refused.

That thereupon, on or about the 2d July, 1863, on the application of said bank, a writ of certiorari was issued by the Supreme Court of this State, in the name of the people of this State, on the relation of said bank to the said commissioners, to review the said assessment and valuation, to which the said commissioners made their return, insisting that the said assessment and valuation were in all respects legal and just; and such proceedings were thereupon had, that on or about the 30th November, 1863, the said Supreme Court, at the general term thereof in and for the first judicial district, did order and adjudge that the said proceedings and determinations of the said commissioners be, and the same thereby were, in all respects, confirmed and held valid, and that the said commissioners recover against the said relator their costs and disbursements, amounting to $46 77, and judgment to that effect was entered in the office of the clerk of the said Supreme Court, at the City Hall in said city, on the day and year aforesaid.

That the relator, the said Bank of the Republic, duly appealed from said order and judgment to the Court of Appeals of this State, and such proceedings were thereupon had in said Court of Appeals, that on or about the 22d day of March, 1864, the said court did order and adjudge that the said judgment so appealed from, so far as

the same awarded costs to the said commissioners, be, and the same thereby was, reversed, and in all other respects the said order or judgment was affirmed, and judgment was entered accordingly.

That thereupon, to wit. on or about the month of April, 1864, the said relator, the said Bank of the Republic, sued out their writ of error in the Supreme Court of the United States to the said Court of Appeals, commanding them to send the record and proceedings in the said matter, under the seal of the said Court of Ap-
7 peals, to the justices of the said Supreme Court of the United States, at the Capitol, in the city of Washington, together with the said writ, on the first Monday of December then next, that the alleged error therein might be corrected, which was done accordingly, and such proceedings were had in the Supreme Court of the United States in the matter and proceeding aforesaid. that in or about the month of December, 1864, the said Supreme Court of the United States. after hearing the said relator and the said respondents, the said commissioners, did order and adjudge that the said order or judgment of the said Court of Appeals be, and the same thereby was, reversed, and by its mandate duly sent to the said Court of Appeals, the said Supreme Court did order and adjudge that the said cause be remanded to the said Court of Appeals, in order that such execution and further proceedings might be had therein, in conformity to the aforesaid judgment of the said Supreme Court of the United States, as according to right and justice, and the Constitution and laws of the United States, ought to be had therein.

And whereas the said Court of Appeals afterwards, to wit. on the 28th day of March, 1865, on reading and filing the said mandate, did order and adjudge that the said judgment of the said Supreme Court of the United States be, and the same thereby was, made the judgment of the said Court of Appeals; and the said judgment of the said Court of Appeals, so removed to the said Supreme Court of the United States, was thereby vacated; and the said Court of Appeals did also at the same time order and adjudge that the said judgment of the said Supreme Court of the State of New York be, and the same thereby was reversed; and the said Supreme Court of the State of New York, was by the said Court of Appeals, in the said proceedings, ordered to enter judgment therein cancelling the said assessment of the said relator's personal estate, referred to in the
8 judgment of that court, from which said appeal to the Court of Appeals was taken.

And it was further ordered by the said Court of Appeals, that the record and proceedings in said matter be remitted to the said Supreme Court of the State of New York for the first judicial district, in order that such execution, and further proceedings therein, might be had in conformity to the said last judgment of the said Court of Appeals, with directions to the said Supreme Court of the State of New York to reverse the said judgment so appealed from, and to enter judgement correcting the said assessment of the relators for the years 1863, for personal estate by reducing the same to $65,000, and awarding a recovery by the appellants against the respondents

of $62 32, adjudged to the appellants by the Supreme Court of the United States.

And whereas, afterwards, to wit, on or before the 12th day of May, 1865, the said record and proceedings, a copy of which is hereto annexed, were by the said Court of Appeals so remitted to the said Supreme Court of the State of New York for the first judicial district, and in such last-mentioned court such proceedings were thereupon had, that on or about the day and year aforesaid, at the said City of New York, the said Supreme Court did order and adjudge that the said judgment of the said last-mentioned court should be, and the same thereby was reversed, and the said court did thereby further order and adjudge that the said assessment of the said Bank of the Republic for the year 1863, for personal property be, and the same thereby was cancelled, so far as the same was based upon said bonds and other securities of the United States, to wit, to the extent of $1,758,000, as aforesaid, and the said assessment and tax corrected by reducing the amount thereof from $1,823,000 to $65,000; and further, that the said relators recover against
9 the said respondents the sum of $62 32 costs for their costs in the Supreme Court of the United States.

And whereas the tax imposed by the said commissioners upon the said Bank of the Republic upon its said personal estate, to the extent of $1,758,000, amounted to the sum of $35,765 30.

And whereas the said board of supervisors of the said county of New York did, notwithstanding the said legal proceedings of the said relators, confirm the said assessment and valuation so made by the said commissioners, and the receiver of taxes of the said City of New York did issue his warrant to O. Sloan Holden, one of the marshals of said city, commanding him to levy and collect the said tax of the property, real and personal, of the said bank.

And whereas the said marshal did, on or about the 22d January, 1864, levy and collect the said tax, together with interest thereon, at 12 per cent. per annum from the 5th October, 1863, to the said 22d January, 1864, amounting to $1,237 24, together with said marshal's fee, amounting to $927 68, amounting in the whole to $37,940 22.

And whereas the personal estate of said Bank of the Republic was, in the year 1864, valued and assessed by the said commissioners of taxes and assessments at the sum of $1,846,860, and the said personal estate to the extent of $688,000 was then invested in bonds and other securities of the United States, and was alleged and claimed by said Bank to be to that extent exempted f om taxation under State authority, as aforesaid.

And whereas the said Bank then and there duly complained to the said commissioners and objected to such valuation and assessment, and requested them to correct the same, and to strike out so much of said assessment and valuation as was represented by said bonds and other securities, on the ground that the same were so exempt from taxation; yet the said commissioners wholly re-
10 fused so to do, and the said Bank was therefore compelled to

pay, and did, on or about the 1st November, 1864, pay the sum of $14,860 80, the amount of said tax for the year 1864, so illegally imposed and collected as alleged, to the receiver of taxes of the city of New York, the proper officer for that purpose, in addition to the other taxes of said bank for that year.

And whereas the legislature of this State did on the 30th April, 1866, pass an act, of which the following is a copy:

The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. The board of supervisors of the county of New York are hereby authorized and directed to cause to be issued to any bank, banking association or insurance company, which may have paid taxes in that county for the year eighteen hundred and sixty-three or eighteen hundred and sixty-four, or which may hereafter pay taxes levied in said years, upon any portion of their capital stock invested in certain securities of the United States by law exempt from taxation, bonds of the county, to be known and designated as "New York County Bonds for the Repayment of Taxes," to the amount of taxes imposed for the years eighteen hundred and sixty-three and eighteen hundred and sixty-four, and collected from or paid by such bank, banking association or insurance company, upon the portion of its capital invested in such securities, together with all amounts paid by or collected from such banks, banking associations or insurance companies, for costs, charges or interest thereon, and interest upon the amounts so paid or collected until the issue or delivery of such bonds. But said bonds shall not be issued to any bank or insurance company until the amount paid by each bank or insurance company for taxes levied in the years eighteen hundred and sixty-three or eighteen hundred and sixty-four, upon such portions of its
11 capital stock as was invested in the securities aforesaid, together with the amount claimed for costs, charges and interest, have been duly audited and allowed by said board of supervisors of the county of New York; provided, however, that the said auditing and allowance shall not be operative and valid until the same shall in each case be first submitted to the mayor and corporation counsel of the city and county of New York, and shall be approved by them.

SEC. 2. Such bonds shall bear interest at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each year, the first payment of such interest to be made on the first day of November, in the year eighteen hundred and sixty-six, and shall be signed by the comptroller, and countersigned by the mayor of the city of New York, and sealed with the common seal of said board of supervisors, attested by the clerk of said board, and shall be transferable in the usual manner, in the office of said comptroller. The principal of such bonds shall be redeemable in five equal annual instalments, commencing November one, eighteen hundred and sixty-seven.

SEC. 3. The said board of supervisors are hereby authorized and directed, immediately upon the completion of the said auditing and

allowance and the giving of the said approval thereto, to hear, audit and determine the aforesaid claims, and to provide by ordinance or resolution, to be passed in the usual manner for the issue of such bonds, and to fix and determine the nominal amount of each bond, and upon such provision being made, the comptroller of the city of New York is hereby authorized and directed to prepare and deliver such bonds to the banks, banking associations or insurance companies, entitled thereto under the provisions of the first section of this act.

SEC. 4. After the issuing of said bonds, the said board of supervisors are hereby authorized and directed to order and cause
12 to be raised by tax on the estates real and personal subject to taxation in the county of New York, yearly, and every year, a sum of money sufficient to pay the interest annually accruing upon such bonds, and also in like manner to cause to be raised by tax such amount as will be sufficient to pay the principal of such bonds as the same shall become due and payable.

SEC. 5. All proceedings for the collection of such taxes herein referred to as have not been paid, are hereby declared null and void.

SEC. 6. This act shall take effect immediately.

And whereas, in pursuance thereof the said Bank of the Republic did present a full and particular statement of its claims to the said board of supervisors to have refunded to it in the bonds mentioned in said act the amount of the tax collected as aforesaid, in the year 1863, so far as the same was based upon the said amount of $1,758,000 of its personal estate invested in United States securities, and as to which the said tax has been corrected by the final judgment in the said proceedings as aforesaid, together with the costs, charges and interest thereon, according to said act; and also, the amount of the tax for the year 1864, collected from the said bank, so far as the same was based upon the said portion of its personal estate then invested in said bonds and other securities of the United States as aforesaid, amounting to $688,000, together with the interest thereon.

And whereas the said board of supervisors, on or about the 12th January, 1867, only audited and allowed the said claim for the portion of the tax of 1863, alleged to have been illegally collected, together with costs, charges and interest thereon, at the sum of $44,022 65, and the said claim for the portion of the tax of 1864, alleged to have been illegally collected with interest at $16,388 41; which claims together amount to the sum of $60,411 06; as thus audited and allowed.

13 That thereupon the said claims, thus audited and allowed, were submitted to the said mayor and the counsel of the corporation of the said city of New York, herein before first mentioned, and were approved by them.

That after the completion of the said auditing and allowance, and the giving of the said approval thereto, the said board of supervisors, by an ordinance or resolution passed in the usual manner, at or about the day and year last aforesaid, heard, audited and determined the said claims at the sums last mentioned, and provided by resolution or ordinance for the issue of said bonds, and fixed and determined the

nominal amount of such bonds to be issued for the payment of the said claims, with interest from the 1st May, 1866; and you, the said Richard B. Connolly, comptroller of said city, did thereupon prepare the said bonds for that purpose, and have the same in your possession ready to be signed, countersigned, sealed, attested and delivered, as provided by said act of the legislaiure, and the resolution and ordinances of the said supervisors as aforesaid.

Nevertheless, although on the 23d day of February, 1867, the said National Bank of the Rupublic did in due form demand of you, the said Richard B. Connolly, comptroller of the city of New York, to sign; and you, the said John T. Hoffman, mayor of said city, to countersign the said bonds for the amount of said claims respectively; and you, the said Joseph B. Young, clerk of the said board of supervisors, to seal the said bonds with the seal of said board of supervisors, and to attest the said seal; and you the said comptroller, to deliver said bonds for those amaunts to the said bank, in accordance with the requirements of the said act of the legislature.

Yet you, and each of you do, although thereunto especially requested, refuse respectively to sign, countersign, seal and deliver said bonds for the amounts of said claims so audited, allowed and approved.

14 And your refusal is based on the ground that parts of said claims for the portion of the taxes of 1863 and 1864, alleged to have been illegally collected from the said bank, consists of certificates of indebtedness of the United States, and that taxes of 1863 and 1864, imposed on investments by the said bank in the public indebtedness of the United States, evidenced by certificates of indebtedness, are not within the purview of the act of the legislature above mentioned, and that by consequence, you, and each of you, as officers of the city and county of New York, had and have no authority in law to issue the bonds for such tax.

Now, therefore, we being willing that full and speedy justice be done in this behalf to the said National Bank of the Republic, of the city of New York, do therefore command you, Richard B. Connolly, as such comptroller, to sign—and you, John T. Hoffman, as such mayor of the city of New York, to countersign—and you, Joseph B. Young, as clerk of the said board of supervisors, to affix the seal of said board. and attest the same to a sufficient number of said bonds to pay the said claims of the said bank so audited, allowed and approved in full—and you, the said comptroller, to deliver the said bonds to the said bank, in the form, and according to the requirements of the said act, immediately after the receipt of this writ—or that you, and each of you, show cause to the contrary thereof before our Supreme Court, at the next special term thereof, at the City Hall in the city of New York, on the first Monday of March, 1867, lest complaint shall again come to us by your default; and in what manner you shall have executed this our writ, make known to our Supreme Court at the next special term thereof, to be held at the time and place aforesaid.

15 Witness Hon. William H. Leonard, justice of the Supreme Court, at the city of New York, the 26th day of February, 1867.

By the court:

[L. S.] (S'd) WM. C. CONNER, *Clerk.*

Thomas H. Rodman, attorney for the relator.

State of New York, Court of Appeals.

Certiorari and return.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* The Bank of the Republic, in the city of New York, *against* THE COMMISSIONERS OF TAXES AND ASSESSMENTS for the city and county of New York.	Certiorari and return.

Pleas before the justices of the Supreme Court of Judicature of the State of New York, held at the City Hall, in the city of New York, on the third Monday of September, one thousand eight hundred and sixty-three.

Present: Hon. Josiah Sutherland, C. J., Hon. William H. Leonard, and Hon. William F. Allen, justices.

Witness:

H. W. GENET, *Clerk.*

16 CITY AND COUNTY OF NEW YORK, *ss:*

Be it remembered, that on the 2d day of July, 1863, before the justices of the Supreme Court of the people of the State of New York, at a special term of said court, held at the City Hall, in the city of New York, come the people of the State of New York on the relation of the Bank of the Republic, in the city of New York, by Mann & Rodman, its attorneys, and bring into the said court, before the aforesaid justices thereof now here, their certain petition for a writ of certiorari to be directed to the commissioners of assessments and taxes of the city and county of New York, which said petition follows in these words, that is to say:

To the Supreme Court of the State of New York:

The petition of the Bank of the Republic, of the city of New York, respectfully showeth—

That your petitioners are an association organized, existing, and transacting business in the city of New York, under and pursuant to the provisions of the act of the legislature of the State of New York, entitled "An act to authorize the business of banking," passed April

18th, 1838, and other acts supplementary thereto and amendatory thereof.

That the capital stock of said association is $2,000,000.

That said association has not surplus profits or reserved funds exceeding ten per cent. of the said capital above stated.

That the said capital was to the extent of $1,758,000 invested in the bonds and other securities of the United States on the 12th January, 1863, on which day the "Annual record of the assessed
17 valuation of real and personal estate" within the city and county of New York was completed by the commissioners of taxes and assessments for said city and county, pursuant to the statute.

That on the 23d April, 1863, your petitioners, according to the provisions of the statute in such case made and provided, presented to the said commissioners a statement, with a schedule thereto annexed, showing the value of the property, real and personal, of said bank subject to taxation; which were duly verified, and copies of which are hereto annexed marked A, which statement and schedule, as your petitioners verily believe, are correct and true in all respects.

That the said bank, as appears by said statement, and in fact, held and owned on the 12th January, 1863, real estate of the value of $177,000, and bonds and other securities of the United States to the amount of $1,758,000, which latter, as they are advised, was exempt from taxation by or under State authority; and that the total value of all other personal estate of the said bank exceeded the amount of its debts in the sum of $65,000 only.

That after the presentment of said statement and schedule as aforesaid, the said commissioners informed the said bank that they have assessed and valued the personal property of the said bank at $1,823,000, and its real estate at $177,000, and have caused the same to be inserted in the tax and assessment roll for the current year as the amount of the personal and real property of said bank assessed to it, and have determined that said bank shall be taxed on the amounts so assessed, and caused a written notice to that effect to be served on the said bank, of which a copy is hereto annexed, marked B.

That your petitioners thereupon, by their attorney and counsel, applied to said commissioners to correct such assessment and
18 taxation, and to strike out the said sum of $1,823,000, as the value and amount of its personal property liable to taxation, and insert in lieu thereof the said sum of $65,000, and presented to said commissioners their objection to such assessment and taxation, and their request in writing, whereof a copy is hereto annexed, marked C.

That said commissioners wholly decline so to do, but insist that your petitioners are liable to such taxation, and are bound to pay taxes on the whole amount of their capital, less the value of their real estate.

That said commissioners are about to present said assessment roll to the board of supervisors of the county of New York, for confirmation of said assessment.

Your petitioners therefore pray that a writ of certiorari may be

allowed and issued out of this court, directed to said commissioners, requiring them to certify and return to this court all and singular their proceedings in the premises, and the documents and papers before them touching or concerning the same, and that said decision and action of the said commissioners may be reviewed and corrected on the merits by this honorable court according to law, and that they may have such other or further relief in the premises as may be meet.

And your petitioners will ever pray, &c.

BANK OF THE REPUBLIC.
By H. W. FORD, *Cashier.*
MANN & RODMAN,
Attorneys for Bank of the Republic.

CITY AND COUNTY OF NEW YORK, *ss:*

Henry W. Ford, cashier of the Bank of the Republic, in New York, saith: That he is an officer of said bank, and is as familiar and
19 well acquainted with the matters mentioned in the foregoing petition as any other officer of said bank; that he has read said petition and knows the contents thereof; that the same is true, to his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

H. W. FORD, *Cashier.*

Sworn to before me this 2d day of July, 1863.
[SEAL.] JOHN J. ANGEVINE,
Notary Public, N. Y.

A.

NEW YORK, *January* 12*th*, 1863.

Statement made and delivered to the commissioners of taxes and assessments of the city and county of New York, for and in behalf of the Bank of the Republic, in pursuance of the provisions of title IV, chapter XIII, part I, of the revised statutes of the State of New York, and of the acts amendatory thereof, chapter 654, laws of 1853, and chapters 456 and 536, laws of 1857:

1st. Real estate owned by the said bank, viz.: banking house and lot situated in first ward.
Sum actually paid therefor $177,000
2d. Capital stock of the said bank actually paid in and secured to be paid in $2,000,000
Excepting therefrom—
Amount paid for real estate, as above stated $177,000
20 Amount of the said capital stock held by the State ..... None.
Amount of the capital stock held by being incorporated institution ..... None.
3d. Amount of surplus profits or reserved funds exceeding ten per cent. of the capital of this bank, deducting losses and unearned interest None

This bank held and owned, at the date above named, stocks, bonds, and other securities of the United States, to the amount o $1,758,000, as per schedule annexed, and claims exemption from taxation on its capital to that amount.

4th. The banking house or office, or the place of transacting the financial business of the said bank is situated in the first ward of the city of New York, at No. 2 Wall street.

Dated January 12, 1863.

CITY OF NEW YORK, *ss:*

I, Henry W. Ford, cashier of the Bank of the Republic, being duly affirmed, do hereby certify and declare that to the best of my knowledge and belief the foregoing statement was in all respects just and true at the date thereof, to and of which date said statement is made, as required by the tax commissioners.

H. W. FORD, *Cashier.*

Affirmed before me this 23d day of April, 1863.

CITY AND COUNTY OF NEW YORK, *ss:*

I, Henry W. Ford, cashier of the Bank of the Republic, being duly sworn, depose and say that the said bank held and owned, on
21 the 12th day of January, A. D. 1863, stocks, bonds and other securities of the United States, to the amount of $1,758,000, the same being exempt from taxation "by or under State authority;" and that the total value of all other personal estate of the said bank at that date exceeded the amount of debts due from said bank, in the sum of $65,000; I therefore respectfully claim, on behalf of said Bank of the Republic, and as the representative thereof, that it had no taxable personal estate, over and above the amount of debts due from said bank, (excluding property exempt by law from taxation,) excepting the sum of $65,000; and that no tax can by law be laid on said bank, save on said sum of $65,000, and on its real estate.

H. W. FORD, *Cashier.*

Affirmed before me, this 23d day of April, A. D. 1863.

Schedule of the United States securities held and owned by the Bank of the Republic, January 12th, 1863.

5	per cent.	bonds of 1874	$100,000
5	do.	do. 1865	6,000
6	do.	do. 1881	42,000
6	do.	Certificates of indebtedness	188,000
5	do.	Assistant treasurer's certificates	1,422,000
			$1,758,000

22 OFFICE OF THE COMMISSIONER OF TAXES AND ASSESSMENTS,
32 Chambers street, (new court house,) New York, 1863.

To H. W. Ford, cashier of the Bank of the Republic :

SIR: We beg leave to inform you that we have corrected the return of the Bank of and have assessed the personal estate at—

Capital	$2,000,000
Surplus	1,823,000
Deducting therefrom for literary and charitable institutions	$
Do. cost of real estate	177,000

The rolls will be returned to the board of supervisors on the first Monday of July next as corrected.

Respectfully,

A. J. WILLIAMSON,
J. W. ALLEN,
J. W. BROWN,
Commissioners of Taxes and Assessments.

23 C.

In the matter of the taxation of the Bank of the Republic, in the city of New York.

To Jonathan W. Allen, A. J. Williamson, Josiah W. Brown, esqrs., commissioners of taxes and assessments for the city and county of New York :

GENTLEMEN : The Bank of the Republic, of the city of New York is informed that the deputy tax commissioner of the first ward of this city, under your direction, has assessesed and valued the personal property of said bank, as liable to taxation, at the sum of $1,823,000, which, with the value of its real estate, $177,000, amounts to $2,000,000, the whole amount of the capital of said bank; and that you have determined that the said bank is taxable, and shall be taxed on the whole amount of said capital as aforesaid, and have inserted such assessment upon the assessment and tax roll for the year 1863.

On the 23d April, 1863, the said bank presented to you a statement and schedule under oath, of which a copy is hereto annexed, marked A, which statement and sehedule in all things set forth correctly and truly the matters and things therein mentioned.

The Bank of the Republic therefore respectfully submits that such assessment and proposed taxation are incorrect and illegal, except to the said real estate; because—

24 The sum of $1,758,000, part of the capital of said bank, is vested in, and consists of the public debt of the United States, to wit: of bonds and other securities of the United States, all of which are by law exempt from taxation.

The Bank of the Republic therefore respectfully protests against such assessment and taxation on the said sum of $1,758,000, and hereby requests you to correct said tax and assessment roll, by

striking therefrom, and inserting in lieu thereof the sum of $65,000, as the value of its personal property taxable by law.

MANN & RODMAN,
Attorneys of Bank of the Republic.

Whereupon the people of the State of New York sent to the commissioners of taxes and assessments of the city and county of New York their writ of certiorari, in these words, viz.:

The people of the State of New York, to the board of commissioners of taxes and assessments of the city and county of New York, greeting:

[U. S. int. rev. stamp, 50c. Original process.]

We being willing, for certain causes, to be certified of the proceedings, decision and action had by and before you in the matter of the assessment for taxation of the Bank of the Republic, in the city of New York, by you lately made:

Do command you that all and singular the documents and papers relating thereto, and your decision and action thereon, and the statement, affidavit and protest presented to you by said bank, with all things touching or concerning the said assessment, as fully and entirely as the same remain before you, you send to our Supreme Court of Judicature, at the City Hall, in the city of New York, on the 3d Monday of September next, together with this writ, to the end that your decision and action in the premises may be reviewed and corrected on the merits of our said court, and that we may further cause to be done thereupon what of right shall be fit to be done.

Witness Hon. Josiah Sutherland, presiding justice of our said court, at the City Hall, in the city of New York, on the second day of February, A. D. 1863.

(By the court.)

[L. S.] H. W. GENET, *Clerk.*

MANN & RODMAN,
Petitioners' Attorneys, Jauncey Court, Wall street, N. Y.

(Endorsed:) "At special term.—Allowed 2d July, 1863.—Jos. Sutherland."

GENTLEMEN: Please take notice of the within certiorari, this day allowed by the Supreme Court in the within entitled matter, and of the petition and annexed papers on which the same was allowed.

New York, July 2d, 1863.

Yours, &c.,

MANN & RODMAN,
Att'ys of the Relators, 37 Wall street, New York.

Jonathan W. Allen and others, commissioners of taxes and assessments of the city and county of New York:

At which day and place, that is to say, on the return day of said writ of certiorari, come the people of the State of New York on the

relation of the Bank of the Republic, in the city of New York, by Mann & Rodman, their attorneys, and the said commissioners
26 of taxes and assessments of the city and county of New York, by John E. Develin, their attorney, also come, and the said commissioners of assessments and taxes now here make return to the said writ as follows, viz.:

To the Supreme Court of the State of New York:

We, the undersigned, commissioners of taxes and assessments for the city and county of New York, pursuant to a certain writ of certiorari delivered to us, and hereto annexed, do certify and return:

That the deputy tax commissioners did, under our direction, as by law required, assess the actual value of the capital stock of the Bank of the Republic, in the city of New York, after deducting the assessed value of its real estate, and all shares of stock in other corporations actually owned by such company, which are liable to taxation upon their capital stock under the laws of this State, and amount of stock held by charitable and literary institutions, at the sum of one million eight hundred and twenty-three thousand ($1,823,000) dollars; and that such assessed valuation was duly entered at detail in the books provided for that purpose, and kept in the office of the said commissioners, called "The Annual Record of the Assessed Valuation of Real and Personal Estate." That notice of such assessment was given to said bank; that thereupon the officers of said bank did appear before us, and did complain of said assessment, and did present to us certain statements in writing, of which a true copy is hereunto annexed, marked.

That thereupon, we, the said commissioners, did examine into the said complaint, and in our judgment the said assessment was and is correct, and we determined that the actual value of the said capital stock, after making the aforesaid deductions, was one million, eight hundred and twenty-three thousand dollars, which we believed
27 and now believe to be just, and such assessment stands in the said annual record of the assessed valuation of real and personal estate, as an assessment for that amount against the said bank.

We further state that our decision thereon was declared, that such reduction made, within thirty days after the said application was made to us as aforesaid, and prior to the first day of May, A. D. 1863. That said assessment so made, and our action thereupon, were under and in pursuance of the several laws of the State of New York, relating to the assessment and collection of taxes in the city and county of New York.

And we do further certify and return that the said Bank of the Republic, in the city of New York, is, and for several years last past has been a banking corporation, created under and by the laws of the State of New York, and not otherwise; and under and in pursuance of such laws, enjoys, and has during all said time enjoyed certain privileges, and is and has been subject to certain burdens; and among other burdens, is and was at the time of such assessment, subject to assessment and taxation upon the value of its capital stock,

without regard to the fact that such capital stock, or any portion of it might be invested in the public stocks, debts, or bonds of the United States; and that such assessment was not made upon the public stocks or bonds of the United States, but was made pursuant to the laws of said State of New York upon the capital stock of said bank, estimated at its just value, after making the exceptions and deductions required by the statutes of said State.

In testimony whereof, we the said commissioners have respectively to these presents subscribed our names and affixed our seals at the city of New York, this 21st day of September, 1863.

[L. S.] A. J. WILLIAMSON.
[L. S.] JONA. W. ALLEN.
[L. S.] J. W. BROWN.

28 But because the court now here is not advised what judgment to give of and upon the premises, a day is therefore given to the parties aforesaid, to be before the justices aforesaid, at the City Hall, in the city of New York, at a general term of this court, on the first Monday of November, one thousand eight hundred and sixty-three, to hear the judgment of the court thereupon, &c., because the said court now here is not advised thereof, &c.

And now at this day, that is to say, on the 30th day of November, in the year 1863, at the City Hall, in the city of New York, at a general term of this court, come the parties aforesaid, by their attorney aforesaid, and all and singular the premises aforesaid being seen and fully understood by the court now here, and mature deliberation being thereupon had, said court rendered its judgment in the following words, viz.:

At a general term of the Supreme Court of the State of New York, at the city of New York, on the 30th day of November, 1863.

Present: Hon. Josiah Sutherland, P. J.; Hon. William H. Leonard, and Hon. William F. Allen, justices.

Judgment.

THE PEOPLE *ex rel.* THE BANK OF THE REPUBLIC, in the city of New York,
against
THE COMMISSIONERS OF TAXES AND ASSESSMENTS of the city and county of New York.

This matter having been brought to a hearing at a general term of this court, in the city of New York, on the 28th day of Sep-
29 tember, 1863, upon the petition, certiorari, and return thereto, and counsel for the relators, and for the board of commissioners of taxes and assessments of the city and county of New York, named in said petition, writ, and proceedings, having been heard, and the court having reviewed upon the merits the decision and

action of said commissioners: Now, on motion of John E. Develin, of counsel for said commissioners,

It is ordered, adjudged, and decreed, that the proceedings and determinations of the said commissioners in the assessments of the said relators be, and the same hereby are, in all respects confirmed and held valid; and it is further adjudged, that the said commissioners recover from the above-named relators their costs and disbursements, to be taxed by the clerk of the court.

[U. S. I. R. 5-ct. stamp, cancelled.]

And the costs of said commissioners being taxed by the clerk of said court, thereupon the following judgment was entered:

At a general term of the Supreme Court of the State of New York, at the city of New York, on the 30th day of November, 1863.

Present: Hon. Josiah Sutherland, P. J.; Hon. William H. Leonard, and Hon. William F. Allen, justices.

Judgment.

THE PEOPLE *ex rel.* THE BANK OF THE REPUBLIC, in the city of New York,
against
THE COMMISSIONERS OF TAXES AND ASSESSMENTS of the city and county of New York.

This matter having been brought to a hearing at a general term of this court in the city of New York, on the 28th day of September, 1863, upon the petition, certiorari, and return thereto, and counsel for the relators and for the board of commissioners of taxes and assessments of the city and county of New York, named in said petition, writ, and proceedings, having been heard, and the court having reviewed upon the merits the decision and action of said commissioners; now on motion of John E. Develin, of counsel for said commissioners, it is ordered, adjudged, and decreed that the proceedings and determination of said commissioners in the assessment of the said relators be, and the same hereby are in all respects confirmed and held valid; and it is further adjudged, that the said commissioners recover from the above-named relators their costs and damages, to be taxed by the clerk of the court; and the said costs having been taxed by the clerk of the court, it is adjudged that the said commissioners of taxes and assessments of the city and county of New York recover from the above-named relators, the Bank of the Republic, in the city of New York, the sum of forty-six dollars and seventy-seven cents, for their costs and disbursements by the clerk aforesaid taxed, and that they have execution thereof according to law.

31 Supreme Court.

Notice of Appeal.

THE PEOPLE *ex rel.* THE BANK OF THE Republic, in the city of New York, appellants,
against
THE COMMISSIONERS OF TAXES AND ASsessments of the city and county of New York, respondents.

Please to take notice that the People *ex rel.* The Bank of the Republic, in the city of New York, appeal from the judgment order of the general term in the above matter, dated the 30th of November, 1863, and entered the 18th of December, 1863, affirming the proceedings and determination of the said commissioners, &c., and the judgment thereupon entered on the day of December, 1863, for $46 77, costs of said commissioners, and from the whole of said judgment order and judgment.

New York, December , 1863.

Yours, &c.,

MANN & RODMAN,
Attorneys for Relators.

TO JOHN E. DEVELIN, Esq.,
Attorney for Respondents, the Clerk of the County of New York.

STATE OF NEW YORK, *City and County of New York, ss:*

I, Henry W. Genet, clerk of the Supreme Court of said State, in and for said city and county, do hereby certify that the preceding consist of certified copies of the judgment roll and notice of appeal on file in my office.

32 In witness whereof, I have hereunto subscribed my name and affixed my official seal, this day of December, 1863.

STATE OF NEW YORK, *County of Kings, ss:*

Thomas H. Rodman being duly sworn, says, that he is one of the firm of Mann & Rodman, attorneys of the relators in the above matter, and that the reasons of the general term of the Supreme Court, for the judgment of said court in said matter, cannot be procured.

THOS. H. RODMAN.

Sworn to before me, this 22d day of Dec., 1863.

NATH'L B. COOKE,
Notary Public in and for Kings County.

STATE OF NEW YORK, *ss:*

[L. S.]

At a Court of Appeals for the State of New York, held at the Capitol in the city of Albany, on the 28th day of March, in the year of our Lord one thousand eight hundred and sixty-five, before the judges of said court.

Present: Hon. Hiram Denio, chief judge presiding.

THE PEOPLE *ex rel.* THE BANK OF THE Republic, of the city of New York, appellants,
against
THE COMMISSIONERS OF TAXES AND ASSESSMENTS for the city and county of New York, respondents.

Judgment of the Court of Appeals.

Be it remembered, that on the 25th day of December, in the
33 year of our Lord one thousand eight hundred and sixty-three. The People *ex rel.* The Bank of the Republic, in the city of New York, the appellants in this action, came here into the Court of Appeals, by Mann & Rodman, their attorneys and counsel, and filed in the said court their notice of appeal, and return thereto from a judgment of the Supreme Court of the State of New York, and the commissioners of taxes and assessments for the city and county of New York, respondents in said cause, afterwards appeared in said Court of Appeals, by John E. Develin, esq., their attorney and counsel, which said notice of appeal and return thereto, filed as aforesaid, are hereto annexed.

Whereupon, the said Court of Appeals, after hearing the said action argued by Alexander W. Bradford, esq., counsel for the appellants, and John E. Develin, esq., counsel for the respondents, and due deliberation having been had thereon, did order and adjudge, that so much of the judgment of the said Supreme Court, appealed from by the said plaintiffs, appellants, as awards costs to the defendants be, and the same was thereby, reversed ; and that the said judgment be, and the same was thereby, in all other respects, affirmed, and the said relators having claimed exemption under and by virtue of the second section of the Act of Congress, entitled "An Act to authorize the issue of United States notes and for the redemption or funding thereof, and for funding the floating debt of the United States," passed February 25th, 1862 ; and by virtue of the eighth section of the first article of the Constitution of the United States, from the taxation mentioned in the record in this cause, on the ground that the amount of their capital stock in that respect mentioned in such record, was invested in the public debt of the United States ; and the validity of the authority claimed under the statute of the State of New York, entitled "An act in relation to the taxation
34 of moneyed corporations and associations," passed April 29, 1863, to impose the tax mentioned in the said record, being drawn in question, it was duly certified by the said court that the

judgment of this court was against the relators, against such exemption, and in favor of the validity of such authority.

That thereafter the said judgment was taken from this court by a writ of error to the Supreme Court of the United States, and the said cause having been argued before the judges thereof, and after due deliberation having been had thereon, the mandate of the said Supreme Court of the United States was returned to this court, of which mandate the following is a copy, viz.:

UNITED STATES OF AMERICA, *ss*:

The President of the United States of America, to the honorable the judges of the Court of Appeals of the State of New York, greeting:

[L. S.]

Whereas, lately in the Court of Appeals of the State of New York, before you or some of you, in a cause between the people of the State of New York, on the relation of the Bank of the Republic, appellants, and the commissioners of taxes and assessments for the city and county of New York, respondents, wherein the judgment of the said Court of Appeals was in the following words, viz.:

"It is ordered that so much of the judgment of the Supreme Court appealed from by the said plaintiffs, appellants, as awards costs to the defendants be, and the same is hereby, reversed; and that the said judgment be, and the same is hereby, in all other respects, affirmed," as by the inspection of the transcript of the record of the said Court of Appeals, which was brought into the Supreme Court of the United States, by virtue of a writ of error, agreeably to the act of Congress in such case made and provided, fully and at large appears.

35 And whereas, in the present term in December, in the year of our Lord one thousand eight hundred and sixty-five, the said cause came on to be heard before the said Supreme Court of the United States on the said transcript of the record, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said Court of Appeals in this cause be, and the same is hereby, reversed with costs, and that the said appellants recover against the said respondents, the commissioners of taxes and assessements for the city and county of New York, sixty-two dollars and thirty-two cents for their costs herein expended, and have execution therefor.

And it is further ordered, that this cause be, and the same is hereby, remanded to the said Court of Appeals, with directions to enter judgment in conformity to the opinion of this court, 30th January.

And the same is hereby remanded to you, the said judges of the said Court of Appeals of the State of New York, in order that such execution and further proceedings may be had in the said cause, in

conformity to the judgment and decree of this court above stated, as according to right and justice, and the Constitution and laws of the United States, ought to be had therein, the said writ of error notwithstanding.

Witness the Honorable Salmon P. Chase, Chief Justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-four.

Costs of appellants.

Clerk	$42 32
Attorney	20 00
	$62 32

Taxed by

D. MIDDLETON,
Clerk of the Supreme Court of the United States.

36 Whereupon the said Court of Appeals, upon reading and filing said mandate, and on motion of, and after hearing Benjamin D. Silliman, esq., counsel for said plaintiffs, appellants, and Messrs. Kernan & Hackett, counsel for defendants, respondents—do hereby order and adjudge that the said judgment of the Supreme Court of the United States be, and the same is hereby, made the judgment of this court; and the said judgment of this court, so heretofore rendered and removed by writ of error to said Supreme Court of the United States, and by said last mentioned court reversed, is hereby vacated.

And it is hereby further ordered and adjudged, that the said judgment of the Supreme Court of the State of New York for the first judicial district, from which an appeal was so as aforesaid taken by said plaintiffs to this court, be and the same is hereby reversed.

And it is hereby further ordered, that the said Supreme Court enter judgment vacating and cancelling the assessment of the relator's personal estate, referred to in the judgment of that court, from which an appeal was so as aforesaid taken to this court.

And it is further ordered that the record in this cause be remitted to the said Supreme Court of the State of New York for the first judicial district, in order that such execution and further proceedings thereon may be had, in conformity to this judgment and decree of this court, as according to right and justice ought to be had, with directions to reverse its judgment so appealed from, and to enter judgment correcting the assessment of the relators for the year 1863, for personal estate, by reducing the same to $65,000, and awarding a recovery by the appellants against the respondents of sixty-two dollars and thirty-two cents, adjudged to them by the Supreme Court of the United States, for costs.

C. P. TEN BROECK, *Deputy Clerk.*

37 I approve of the above order as to form.

(Signed) JOHN E. DEVELIN,
Attorney for Respondents.
By JOHN K. HACKETT.

COURT OF APPELS, CLERK'S OFFICE,
ALBANY, *April 29th*, 1865.

I hereby certify that the preceding record contains a correct transcript of the mandate of the Supreme Court of the United States, and of the proceedings in said action in the Court of Appeals, with the papers originally filed attached.

C. P. TEN BROECK,
Deputy Clerk.

Supreme Court.

Judgment of Supreme Court.

At a special term of the Supreme Court of the State of New York, at Chambers, in the City of Hall of the city of New York, on the 16th day of May, one thousand eight hundred and sixty-five.

Present: The Hon. Josiah Sutherland, justice.

THE PEOPLE *ex rel.* THE BANK OF the Republic, of the city of New York, plaintiffs,
against
THE COMMISSIONERS OF TAXES and Assessments for the city and county of New York, defendants.

38 The plaintiffs having appealed to the Court of Appeals from the judgment entered in this court on the 24th day of December, 1863, and the Court of Appeals having adjudged on said appeal, that the said judgment of this court be reversed, and that this court enter judgment vacating and cancelling the assessment of the relator's personal estate for the year 1863, and that the record in this cause be remitted to this court, in order that such execution and further proceedings may be had therein, in conformity to the said decree of the said Court of Appeals, as according to right and justice ought to be had, with directions to reverse the judgment of this court so appealed from, and to enter judgment correcting the assessment of the relators for the year 1863 for personal estate, by reducing the same to $65,000, and awarding a recovery for the appellants, the above plaintiffs against the respondents, the above defendants of sixty-two dollars and thirty-two cents costs, adjudged to them by the Supreme Court of the United States:

Now, on reading and filing the record of judgment and remittitur of the Court of Appeals, and on motion of Mann & Rodman, attorneys, and of counsel for said plaintiffs:

It is adjudged that the said judgment so entered in this court on the 24th day of December, 1863, be, and the same is hereby reversed, annulled, and altogether held for nothing, and that the assessment of the relators, The Bank of the Republic, in the city of New York, for the year 1863, for personal estate be, and same [same] is hereby va-

cated and cancelled, and that the same be corrected by reducing the same to sixty-five thousand dollars.

And it is further adjudged, that the said plaintiffs do recover against the said defendants the said sum of sixty-two dollars
39 and thirty-two cents, for their costs in the Supreme Court of the United States, and have execution thereof.

Enter. J. SUTHERLAND.

I consent to the entry of the foregoing judgment.

JOHN E. DEVELIN,
Respondents' Attorney.

And the said respondents returned to the said writ as follows:

The answer of John T. Hoffman, mayor, and Richard B. Connolly, comptroller of the city of New York, and Joseph B. Young, clerk of the board of supervisors of the county of New York, to the within-mentioned writ of alternative mandamus.

We, the said John T. Hoffman, mayor, Richard B. Connolly, comptroller of the city of New York, and Joseph B. Young, clerk of the board of supervisors, hereby return to the Supreme Court:

That of the capital of the said relator, The National Bank of the Republic, in respect to which the taxes for the years 1863 and 1864 were imposed upon and collected from said bank, a large sum was invested in certificates issued under and pursuant to the provisions of the act of Congress of the United States, passed March 1st, 1862, commonly called certificates of indebtedness.

That in the audit and allowance of the claim of said relator, mentioned in said writ of alternative mandamus, to be refunded, the taxes paid by said relator for the years 1863 and 1864, in respect to that portion of its capital invested in securities of the United States by law exempt from taxation, the said board of supervisors did allow to said relator the amount of taxes imposed upon it for and in respect to the amount of its capital so invested in said certificates of indebtedness.

40 That the question of the exemption of said certificates from taxation was not raised, argued, or adjudicated in the suit or proceedings mentioned in said writ, except as appears by the record thereof, annexed to the writ herein.

Wherefore respondents claim that the said audit and allowance of the claim of said relator, so far as it includes the amount of tax imposed upon said bank in respect to that portion of its capital invested in said certificates of indebtedness, was unauthorized by the said act, April 30th, 1866, and was therefore illegal and void.

JOHN T. HOFFMAN,
Mayor.
RICHARD B. CONNOLLY,
Comptroller.
JOSEPH B. YOUNG,
Clerk of the Board of Supervisors.
RICHARD O'GORMAN,
Counsel to the Corporation.

And the said relators, by their attorney aforesaid, did demur to the return of the respondents, as follows:

Supreme Court.

Demurrer.

THE PEOPLE ON THE RELATION OF THE NATIONAL Bank of the Republic, of the city of New York,
against
JOHN T. HOFFMAN, MAYOR OF THE CITY OF NEW York, and others.

The relator demurs to the return of the defendants.

41 For that the same does not state facts sufficient to constitute a defense to the said writ.

THOMAS H. RODMAN,
Attorney for Relator.

In which demurrer the said defendants, by Richard O'Gorman, their attorney, join as follows:

Supreme Court.

THE PEOPLE *ex rel.* THE NATIONAL BANK OF THE Republic,
against
JOHN T. HOFFMAN AND OTHERS.
} Joinder in demurrer.

The respondents herein say, that the matters stated by them in their said return to the writ of alternative mandamus herein, are sufficient in law in answer thereto, and pray judgment with costs.

RICHARD O'GORMAN,
Counsel to Corporation, Attorney for Defendants.

42 At a special term of the Supreme Court, held at the City Hall, in the city of New York, on the 12th day of March, 1867.

Present: Hon. D. P. Ingraham, justice.

THE PEOPLE *ex. rel.* THE NATIONAL BANK OF THE Republic, of the city of New York,
against
JOHN HOFFMAN, MAYOR, &C., AND OTHERS.
} Judgment.

This matter having been brought on upon the return of the said respondents to the writ of alternative mandamus issued herein, the demurrer of the said relators to said return and rejoinder of the respondents therein, and after hearing counsel for the respective parties, it is ordered and adjudged that the said John T. Hoffman, mayor of the city of New York, Richard B. Connolly, comptroller thereof, and Joseph B. Young, clerk of the board of supervisors of

the county of New York, have made good answer to the aforesaid writ, and are entitled to judgment against the said relators, with costs fixed at fifteen dollars; and it is further ordered that they have judgment and execution therefor.

Enter. D. P. I.

And the matters aforesaid having been considered, and the parties by their counsel having been heard, and due deliberation had, it is ordered and adjudged by the justice aforesaid, that the respondents aforesaid, the said John T. Hoffman, mayor, and Richard B. Connolly, comptroller of the city of New York, and Joseph B. Young, clerk of the board of supervisors of the county of New York, had made
43 good answer to the aforesaid writ, and were entitled to judgment against the relators herein, with costs fixed at fifteen dollars.

Wherefore it is considered, ordered, and adjudged, that the said respondents aforesaid, have judgment against the said relators herein, with fifteen dollars costs, to be paid to the respondents, and that they have execution therefor.

Judgment signed this 13th day of March, A. D. 1867.

WM. C. CONNER, *Clerk.*

At a general term of the Supreme Court, held in and for the first judicial district, at the City Hall, of the city of New York, on the 20th day of March, 1867.

Present: The Hon. Wm. H. Leonard, P. J., Josiah Sutherland and Daniel P. Ingraham, justices.

Judgment.

THE PEOPLE ON THE RELATION OF THE National Bank of the Republic, of the city of New York, appellants,
against
JOHN T. HOFFMAN, MAYOR OF THE CITY of New York, Richard B. Connolly, comptroller of said city, and Joseph B. Young, clerk of the board of supervisors of the county of New York, respondents.

This cause having come on for argument upon the plaintiffs' appeal from the judgment entered herein on the 13th day of March, 1867, in favor of the above defendants, and against the plain-
44 tiffs; and after hearing Mr. Rodman, of counsel for the appellants, and Mr. O'Gorman, of counsel for the respondents: It is ordered that said judgment so appealed from be, and the same hereby is, in all things affirmed, with costs.

Enter.

WM. H. L., *P. J.*

And now at this day, that is to say, on the 20th day of March, 1867, at the City Hall of the city of New York, at a general term of this court, came the parties aforesaid, by their attorneys aforesaid, and all and singular, the premises aforesaid, being seen and fully understood by the court now here, and deliberation having been had, said court ordered judgment in the following words:

It is ordered and adjudged that the judgment entered herein on the 13th day of March, 1867, in favor of the defendants, the said John T. Hoffman, mayor, and Richard B. Connolly, comptroller of the city of New York, and Joseph B. Young, clerk of the board of supervisors of the county of New York, and against the plaintiffs, The People *ex rel.* The National Bank of the Republic, of the city of New York, so appealed from, be, and the same hereby is, affirmed, with costs.

Wherefore it is ordered and adjudged, that the said respondents aforesaid have judgment against said appellants herein, with sixty dollars costs, to be paid to the respondents, and that they have execution therefor.

Judgment signed this 21st day of March, 1867.

WM. C. CONNER, *Clerk.*

45 Supreme Court.

Notice of appeal.

THE PEOPLE ON THE RELATION OF THE National Bank of the Republic, &c. appellants,

against

JOHN T. HOFFMAN, MAYOR OF THE CITY of New York, Richard B. Connolly, comptroller of said city, and Joseph B. Young, clerk of the Board of Supervisors of the county of New York, respondents.

SIR: You will please take notice that the above-named appellant appeal to the Court of Appeals of the State of New York from the judgment of the general term, and from every part thereof, entered herein on the 21st day of March, 1867, affirming the judgment of the special term entered in said cause on the 13th day of March, 1867, in favor of the defendants and against the plaintiffs, in the office of the clerk of the county of New York.

Dated New York, March 21st, 1867.

Yours, &c.,

THOMAS H. RODMAN,
Appellants' Attorney.

To Richard O'Gorman, esq., respondents' attorney; Wm. C. Conner, esq., clerk of the county of New York.

46 At a term at the Court of Appeals of the State of New York, held at the capitol, in the city of Albany, on the 31st day of December, A. D. 1867.

Present: The Hon. Henry E. Davies, chief judge presiding.

THE PEOPLE *ex rel.* THE NATIONAL BANK OF the Republic, app'ls,
v.
JOHN T. HOFFMAN, MAYOR, &c., AND OTHERS, resp'ts.

The appeal in this cause having been argued by Mr. Thomas H. Rodman, of counsel for the relator, and by Mr. Richard O'Gorman, of counsel for the defendants, respondents, and due deliberation having been had thereon, it is ordered and adjudged that the judgment of the Supreme Court appealed from be, and the same is hereby, in all things affirmed with costs to the respondents.

And the relators, The National Bank of the Republic, of the city of New York, having claimed that such portion of its capital stock as was invested in certificates of indebtedness issued under and by virtue of the act of March 1, 1862, was exempt from taxation by
47 State or municipal authority, under and by virtue of the 8th section of article one of the Constitution of the United States, and also under and by virtue of the 2d section of the act of Congress entitled "An act to authorize the issue of United States notes and for the redemption or funding thereof, and for funding the floating debt of the United States," approved February 25th, 1862, and also under and by virtue of an act of Congress entitled "An act to provide ways and means for the support of the government," approved March 3, 1863, and also by virtue of the act of Congress entitled "An act to provide a national currency secured by a pledge of the United States stocks, and to provide for the circulation and redemption thereof," approved 25th February, 1863, and by virtue of an act of Congress similarly entitled, approved June 3, 1864, and the act of Congress entitled "An act to provide ways and means for the support of the government and for other purposes," approved June 30, 1864, and the several acts additional to and amendatory of said several acts, on the ground that the portion of the capital stock of said The National Bank of the Republic, of the city of New York, so invested as aforesaid, is invested in the public debt of the United States, and thereby exempt from taxation by State or municipal authority, and on the ground that a tax upon said capital so invested is prohibited by the Constitution and laws of the United
48 States, and the validity of the authority claimed under the statute of the State of New York entitled "An act in relation to the taxation of moneyed corporations and associations passed April 29, 1863, and other statutes of said State to impose a tax upon said portion of the capital of said bank so invested as aforesaid being drawn in question.

It is certified that the judgment of this court is against the said relators, The National Bank of the Republic, of the city of New

York, the appellant, and is against the exception, right, privilege, or exemption claimed by said appellant under and by virtue of the said provisions of the Constitution of the United States, and the several acts of Congress before referred to, and in favor of the validity of the said statute of the State of New York, and of the authority exercised thereunder, and of the construction of the 8th section of article one of the Constitution of the United States, and of the several acts of Congress before mentioned and drawn in question.

C. H. YOUNG,
Deputy Clerk of the Court of Appeals
of the State of New York.

C. S. Westcott & Co., Law Printers, 79 John St., N. Y.

U. S. Supreme Court.

THE PEOPLE, &c., *ex rel.* THE NATIONAL BANK OF THE REPUBLIC, of the city of New York,

Plaintiff in Error,

vs.

JOHN T. HOFFMAN, Mayor of the city of New York, RICHARD B. CONNOLLY, Comptroller of the city of New York, JOSEPH B. YOUNG, Clerk of the Board of Supervisors of the county of New York,

Defendants in Error.

Statement and Points of Plaintiff in Error.

This case arises upon a writ of error to the Court of Appeals of New York to review its judgment affirming the judgment of the General Term of the Supreme Court, in the First Judicial District of that State, affirming a judgment at Special Term denying an application for a peremptory mandamus to compel the defendants in error to issue bonds of the county of New York to the relators for the amount of the claim of the bank, to have refunded, under the Act of the Legislature of April 30, 1866, certain taxes imposed upon a part of the capital of the bank which, in

the years 1863 and 1864, was invested in United States securities exempt from State taxation.

The Supervisors audited and allowed the claim at $60,411.06; the Mayor and Counsel of the Corporation of the city of New York approved the audit and allowance in accordance with the provision of the Act, April 30, 1866; and the Supervisors then, by resolution, directed the Comptroller to print and issue the bonds for the amount of the claim; which bonds, according to said act, are required to be signed by the Comptroller, countersigned by the Mayor, and sealed by the Respondent, the clerk of the Supervisors.

On demand being then made the Comptroller refused to deliver the bonds, and that officer and the Mayor refused to sign them, and the clerk of the Supervisors to seal them, on the ground that a part of the claim was based upon "certificates of indebtedness" of the United States, and that they were not exempt from taxation.

The record shows that the capital of the relators was in 1863 taxed, as invested in real estate, at $177,000, in personal estate at $1,823,000—that they claimed exemption upon $1,758,000 of such capital invested in personal estate, on the ground that it consisted of United States securities, as follows (~~fols. 12-14~~): Mandamus, p 6, certiorari p 16.

United States 5 per cent. Bonds of 1874.....					$100,000
Do.	5	do.	do.	1865.....	6,000
Do.	6	do.	do.	1881.....	42,000
U. S. 6 *per cent. Certificates of Indebtedness*....					188,000
U. S. 5 per cent. Assist. Treasurer's Certificates					1,422,000
					$1,758,000

and applied to the Commissioners of Taxes and Assessments, under the provisions of the law, for a correction of their assessment and valuation of such personal estate

to that extent. That such officer refused such application, and a *certiorari*, in the Supreme Court, was brought by the relators to compel them to correct the alleged error.

That Court, at ~~Special and~~ General Term, and the Court of Appeals upon appeal, sustained the action of the Tax Commissioners. The Supreme Court of the United States, upon writ of error, reversed the judgment of the Court of Appeals, and that Court, in accordance with that decision, rendered its judgment, vacating its own judgment, and reversing the judgments of the Supreme Court of the State, and directing it to enter *judgment, cancelling the assessment of the relator's personal estate*, and also directing it to reverse its judgment, and to *enter judgment, reducing the assessment of the relator's personal estate from* $1,823,000 (at which it was assessed) to $65,000; being the difference between $1,823,000, the amount of the assessment, and $1,758,000, the amount invested in United States securities, *including* $188,000 *certificates of indebtedness.* ~~(Fols. 19-27, certiorari; fols. 69, 107, 110-118.)~~ ~~R. 20 to R. 26.~~

And such judgment was so entered in the Supreme Court. ~~(Fols. 121-125.)~~ R 20 to R. 26.

Pending these proceedings, the whole tax of 1863 was collected of the relator by warrant. R. 9.

In 1864, the relators were again assessed upon their capital invested in personal estate, including $688,000 invested in United States securities, and the Tax Commissioners, on complaint duly made on the same ground of this exemption of such securities from taxation, refused to correct, and the relators were compelled to pay the whole tax of that year. ~~(Fol. 29.)~~ R 10

A part of such last-mentioned securities consisted of like certificates of indebtedness.

Points.

I.

1. The relator having a judgment of the Supreme Court, U. S., and also of the *State Court*, adjudging the *certificates of indebtedness* ($188,000) on which it was attempted to tax the bank in 1863, to be exempt from taxation by the State; that question is *res adjudicata*, as between the city and the Relator.

The principle is elementary. The judgment of a court of concurrent jurisdiction directly upon the point, is as a plea—a bar; or as evidence conclusive between the same parties, upon the same matter directly in issue in another Court.

Birkhead v. *Brown*, 5 Sandf., 134.

This is so, although the evidence offered in the second suit, if given in the first, would have entitled the party estopped to recover. Id.

And although the *subject matter* of the second action be different from that of the first, if the *question* be the same.

Doty v. *Brown*, 4 Comstock, 70, and cases cited by Ruggles, J.
Bouchaud v. *Dias*, 3 Denio, 238.
White v. *Coatsworth*, 6 N. Y. 137.
Castle v. *Noyes*, 14 Id. 329.

A decree *by default* at the hearing after publication passed, is as conclusive as if granted after hearing on pleadings and proofs.

Ogsbury v. *Lafarge*, 2 N. Y. 113.

So when a mortgagor being sued at law pleaded usury but failed to appear at the trial; held, that the verdict

and judgment estopped him from interposing the defence in equity upon foreclosure.

Morris v. *Floyd*, 5 Barb. 130.

"The settled principle of law appears to be, that the "*same point or question*, when once litigated and settled "by a verdict and judgment thereon, shall not again be "contested in any subsequent controversy between the "same parties depending on *that point or question*."

Ruggles, J., *Doty* v. *Brown*, 4 N. Y. p. 73.

(*a.*) A judgment of a court of competent jurisdiction is "*final* not only as to the subject matter thereby actually "determined *but as to every other matter which the parties "might litigate in the cause, and which they might have had "decided*."

Per Jewett, J., *Embury* v. *Connor*, 3 Coms. 511, and cases cited at page 522.

2. The respondents to the *certiorari* having been the Commissioners of Taxes and Assessments of the city and county of New York (the city embracing the county in all respects), and the respondents here being the Mayor and Comptroller of the city, and the Clerk of the Board of Supervisors of the city and county; the parties to both controversies are substantially and legally the same.

The *real* parties in interest, although not the *nominal* parties to a suit, are bound by the judgment rendered, equally as though they had been nominally parties.

Southgate v. *Montgomery*, 1 Paige, 41.

In the Supreme Court of New York it was held that a judgment recovered against the *overseers of the poor of a town*, in their official capacity, was conclusive upon *the supervisors of the county* upon *mandamus to compel them to levy and assess the amount*.

The People, ex. rel. *Allaben* vs. *The Board of Supervisors of Delaware*, 20 How. Pr. Rep. 50.

3. To the objection that the *record* of the former proceeding does not embrace the petition for the *certiorari* and its accompanying statements, we say, the return of the Commissioners of Taxes and assessments to the *certiorari* makes those statements of the relator annexed to the petition part of their return (fol. 86), and they were required to do so by the *certiorari* (fol. 78).

II.

1. Certificates of indebtedness are "securities of the United States" within the meaning of the second section of the act of Congress of February 25, 1862 (U. S. Sess. Laws, 1862, p. 345). The most ingenious professional criticism is requisite to render even plausible a contrary interpretation.

When it is considered that the obligations in question are in the form uniformly adopted by the Government from its origin, for its issues of "United States Stocks" (so called), with the single exception of its issue of *Treasury notes;* that these obligations *bear interest*, and are payable *in futuro;* that they have always *necessarily* been issued, *to obtain further credit* and thus facilitate the financial operations of the Government; and that the act of Congress of 1862, declaring the exemption claimed, was an act to provide "ways and means for the support of the Government," *when it sorely needed credit and support;* and that upon its declarations of the terms on which it sought that credit and support, its creditors had the right to rely; the proposition that these written "obligations" are not "securities of the United States," finds, we submit, no countenance in the *common* sense of men.

The seventh section of the same act inflicts a penalty as for a felony upon any person having the custody of plates "from which *any* notes, bonds, coupons, *or other securities*

"*mentioned in this act or any part thereof*, shall have been "printed, and who shall permit the same to be used for "the purpose of printing any notes, bonds, coupons, or "'other securities,' except for the use of the United States; "and also upon any person engraving plates in their "similitude, or selling them, etc., etc." Can it be doubted that that section would apply to a fraudulent use of plates from which *certificates of indebtedness* had been printed?

Again, Congress has given a legislative construction to the language of the Act of 1862, in that of June 30, 1864, § 13, Session Laws, p. 222, by declaring that the words "obligations or *other security* of the United States," used in that act, should be held to include "certificates of in-"debtedness and other representatives of value of *what-*"*ever denomination*, which *have been or may be* issued "under any act of Congress."

That act was also an act to provide for the support of the Government, and especially authorized the issue of 400,000,000 of bonds; and with the same purpose manifested in the Act of 1862, declared "all bonds, treasury "notes, and *other obligations* of the United States," exempt from State taxation. (Sec. 1.)

That act also, like the Act of 1862, inflicts a penalty upon any fraudulent use of plates from which "*any obli-*"*gation* or *other security*" shall have been printed, and for forging such "obligations or securities." (§§ 10, 11.) A fair, sensible interpretation requires that the words there used be construed to include the certificates in question, and that the same interpretation be given to those words throughout the act.

2. Except when Treasury notes have been adopted as temporary expedients, certificates of indebtedness have, from the foundation of the Government, been the uniform evidence of its funded indebtedness. That form of obligation was issued for the Revolutionary debt.

1 Story's U. S. Statutes, 110.
See also Id., 264, 400, 403, 405, 446.
2 Id., 1173, 1640, 1837.

The same form now prevails. The whole public debt, with the exception of that evidenced by Treasury notes, is in the form of certificates of indebtedness.

III.

Irrespective of legislative exemption, these certificates are exempt from State taxation. The Constitution protects against State taxation every agency, contract, or instrumentality necessary or proper for the most convenient and efficient exercise of the powers of the Federal Government. This protection has no limitation. It is perfect and absolute.

In *McCullough* v. *State of Maryland*, 4 Wheat. 316—a stamp duty on notes was held void.

In *Osborne* v. *U. S. Bank*, 9 Id. 738—a tax on the office of that bank was held void.

In *Brown* v. *State of Maryland*, 12 Id. 419—a license duty on the sale of imported liquors in original packages.

In *Dobbins* v. *Commissioners of Erie*, 16 Pet. 435—a tax on a valuation of an office in a revenue cutter; and in *Weston* v. *City of Charleston*, 2 Id. 449, a municipal tax on U. S. stocks was held void upon the same principle.

The fact that the Federal Government has adopted this among other modes of conducting its financial operations, establishes the character of the transaction as a necessary and proper exercise of its powers.

IV.

The defendants' argument, based upon the circumstance that certificates of indebtedness have been issued not to "borrow money," but to liquidate debts due by the Government, proves too much. For if, *for that reason*, such certificates are taxable by State authority, bonds issued for the liquidation of past due bonds or coupons, or any precedent debt of the Government, would be equally taxable by State authority.

No one has, *as yet*, asserted this.

The judgment, we submit, should be reversed, and the mandamus ordered.

THOMAS H. RODMAN,
Of Counsel for Relator,
Plaintiff in Error.